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1 ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

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3 MEETING OF THE

4 UNDERGROUND STORAGE TANK POLICY COMMISSION

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7 Phoenix, Arizona

8 September 22, 2004

9 9:00 a.m.

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11 Location: Arizona Department of

12 Environmental Quality

13 Conference Room 250

14 1110 West Washington

15 Phoenix, Arizona

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1 COMMITTEE MEMBERS PRESENT:

2 Gail Clement, Chairperson

3 Hal Gill, Vice Chairperson

4 Roger Beal

5 Theresa Foster

6 Tamara Huddleston

7 Phil McNeely

8 Michael O'Hara

9 George Tsiolis

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P R O C E E D I N G S

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CHAIRPERSON CLEMENT: Good morning. Welcome

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to the September 22nd UST Policy Commission. We're very

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glad to see everyone. Let's take a roll call of the

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Policy Commission. Theresa.

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MS. FOSTER: Theresa Foster.

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MR. BEAL: Roger Beal.

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CHAIRPERSON CLEMENT: Gail Clement.

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MR. GILL: Hall Gill.

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MR. O'HARA: Mike O'Hara.

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MR. MCNEELY: Phil McNeely.

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MS. HUDDLESTON: Tamara Huddleston.

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CHAIRPERSON CLEMENT: Thank you. I do know

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that Andrea Martincic will not be with us today. She got

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her 4th and 5th Wednesdays of the month confused.

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So just so that everybody knows, the Policy

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Commission standing schedule is the 4th Wednesday of the

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month even if there are five Wednesdays in the month.

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And the Technical Subcommittee meeting is

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typically, unless canceled, the 2nd Wednesday of the

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month.

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The first agenda item is approval of the

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minutes from the August 2004 meeting.

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Did everybody have a chance to read those?

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1 Any questions, comments? Any motions to approve?

2 MR. BEAL: I move to approve.

3 CHAIRPERSON CLEMENT: Second?

4 MR. O'HARA: I second.

5 CHAIRPERSON CLEMENT: All in favor?

6 (Positive response)

7 CHAIRPERSON CLEMENT: All opposed?

8 (No response)

9 CHAIRPERSON CLEMENT: Okay. The third agenda
10 topic we have today is regarding some administrative
11 issues. And I was not here at the last meeting.

12 So I am going to turn over the discussion, at
13 least for the first -- well, both items, actually, to Hal
14 Gill who was acting as chairperson during that meeting.

15 The first agenda item is discussion of when a
16 vote is required to move issues forward not only to the
17 public but just to move issues forward from the Policy
18 Commission.

19 MR. GILL: Thank you, Gail. I remember we
20 had some discussion last time. And I'm confused now as
21 to why we had this discussion because I thought that at
22 one point we didn't have a quorum and that might have
23 been what raised the issue.

24 But I think we all agree that if there is an
25 issue that we are indeed going to make recommendations,

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1 written recommendations that go forward to the director
2 and the governor and speaker of the house and president
3 of the senate, that we indeed need to vote on it, but I
4 didn't know --

5 The discussion we had last time, do we have
6 to vote on every issue that comes before us before it
7 goes to the bulletin or goes to wherever it's going to
8 go. And I think that was where I had --

9 Because I remember we had a discussion last
10 month and I just can't remember exactly what --

11 CHAIRPERSON CLEMENT: Mr. McNeely.

12 MR. MCNEELY: Chairman and Hal, the issue
13 was, you were going to vote on the release and reporting
14 policy and make recommendations that we adopted.

15 It wasn't on the agenda that we were going to
16 vote on that. So then the issue was, if we can't vote on
17 it as the ADEQ, should we still present this through our
18 Policy Review Committee internally without a vote.

19 And I think we had a consensus, yes, it
20 sounds good, let's go ahead. It went through the
21 Technical Committee, so go ahead and move forward with
22 it. So I think the issue was, do we have to have a
23 formal vote -- when DEQ gives the Policy Commission 30
24 days for review or guidance or policies, does it take a
25 formal vote to move that forward? That was the issue.

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1 MR. GILL: That's right.

2 MR. MCNEELY: And there was another issue on
3 top of that. In the past we have been putting stuff on
4 the bulletin board pretty quickly.

5 But internally we do have a policy Review
6 Committee at DEQ that represents all the divisions in the
7 director's office. They review all of our policies to
8 make sure that we're being consistent in every division,
9 every section.

10 So in the future, once the Policy Commission
11 does approve it, and I guess we still need to talk about
12 if it's a vote or not or consensus, we still have to go
13 through our process internally once you guys recommend
14 that. And we're not going to put it on the bulletin
15 board or the website until we get approval from the
16 director's office that the policy is approved.

17 So it's going to be a little more formal
18 process, but in that way we won't put things on the web
19 and start inputting stuff that is not approved by the
20 process.

21 CHAIRPERSON CLEMENT: Ms. Huddleston.

22 MS. HUDDLESTON: If I may make a
23 recommendation. I believe that, pursuant to the open
24 meetings law, you do need to make something of a decision
25 or a vote, be it a consensus or an actual vote before

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1 approving or making other decisions.

2 I would suggest, however, that we postpone
3 this issue and invite Lori Woodall, the counsel for the
4 Commission, to come to the next meeting and to make a
5 presentation on this issue.

6 CHAIRPERSON CLEMENT: She is our
7 representative as far as the Attorney General's Office to
8 provide legal advice to the Commission. And I don't
9 think that would hurt in any way to have us be reminded
10 about the basics.

11 Is there any additional discussion regarding
12 inviting Lori? Ms. Foster?

13 MS. FOSTER: Not about inviting her or not.
14 But I think the one issue we had last month, we cannot
15 vote on an issue unless it's on the agenda and it's been
16 publicly noticed.

17 The other issue is what gets on the bulletin
18 board. I don't think that we have to approve everything
19 that goes on the bulletin board. I think we can give a
20 recommendation to the director to post something.

21 But DEQ and its director should have the
22 ability to post whatever they'd like on the bulletin
23 board or bulletins.

24 CHAIRPERSON CLEMENT: Mr. Beal.

25 MR. BEAL: I would believe that it would be

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1 important that we vote on anything that becomes policy,
2 not necessarily in order for it to go to the internal
3 policy review but certainly before it becomes policy.

4 In other words, you went ahead and worked on
5 something, we could have voted on it at this meeting and
6 it would have become a policy also. The order isn't that
7 important as long as we eventually end up voting on the
8 issues that become policy.

9 CHAIRPERSON CLEMENT: Mr. McNeely.

10 MR. MCNEELY: Yes. And I agree with you.
11 The bulletin board is, you know, to get the information
12 out there quickly, but if it's a substantive policy we
13 won't put it on the bulletin board or on our website
14 until it goes through our formal process.

15 CHAIRPERSON CLEMENT: And that always has
16 become, I think, what is in the substantive policies
17 versus, you know, what are things that we have agreed
18 would be a good idea to do. And that's where the gray
19 area comes. And we have had discussions in the past
20 about that. And that's always difficult to determine.

21 I think that's almost a case-by-case
22 situation based on input from DEQ and the Policy
23 Commission and the regulated community.

24 But unless anybody has an objection, why
25 don't we invite Lori to our next -- the AG's office

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1 representative, to our next Policy Commission to give us
2 just another briefing. I know she did this perhaps about
3 a year and a half ago, two years ago, something like
4 that, to give us a briefing on the ground rules in terms
5 of approving policy.

6 And if she needs additional subject matter,
7 if anybody's got any other ideas that you want her to
8 convey to us, perhaps think about that and we can get
9 some information to Al Johnson on that.

10 Any other discussion on that?

11 Okay. Great.

12 The next agenda item was, I think it's
13 another -- Hal Gill, that you wanted to discuss how to
14 navigate the UST website to find the UST bulletins.

15 MR. GILL: Well, I understand that there was
16 a new -- a web page. And I just want to ask Al if he can
17 kind of let us know because the last one, we were told
18 exactly how to find the bulletin and it was relatively
19 easy.

20 And knowing the problems people have with web
21 pages, especially me, I just thought it might be helpful
22 if Al could let us know what the new web page, you know,
23 procedures were to get to the bulletin and to the DEQ any
24 information they are putting on the bulletin.

25 MR. JOHNSON: I'm happy to do so. I was

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1 thinking about that. I think probably the easiest way to
2 handle this is just e-mail all of you the web link for
3 that so that you'll have -- you really don't have to do a
4 lot of navigating. You'll have the link and you can
5 bookmark that.

6 MR. GILL: But I guess what I was getting at
7 was, I remember, and I can't remember now exactly how
8 it's done, but Judy told us you could go to this
9 particular department because the problem was -- is, it
10 wasn't necessarily where everyone would think it would
11 be. You had to hit a particular thing like
12 administration. And we wouldn't think of a bulletin
13 being on administration. And that's what I was getting
14 at is, how do we do that now?

15 MR. JOHNSON: Well, I can also, in that
16 e-mail, I'll lay out the navigational steps that you need
17 to follow.

18 CHAIRPERSON CLEMENT: That would be helpful.

19 MR. GILL: That would be great.

20 CHAIRPERSON CLEMENT: Ms. Navarrete.

21 MS. NAVARRETE: If you go to the new tank
22 programs division, it's pretty intuitive from there.

23 CHAIRPERSON CLEMENT: It's my understanding
24 everything is now under the tank division. Everything
25 has been moved out of administration and waste divisions

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1 and everything now is under that one. At least you start
2 there.

3 MS. NAVARRETE: Right. It's pretty intuitive
4 as to how you get to everything, SAF.

5 CHAIRPERSON CLEMENT: Okay. Great.

6 Is that sufficient?

7 MR. GILL: Yes. Thank you.

8 CHAIRPERSON CLEMENT: Thank you.

9 The next agenda item is ADEQ Updates. And
10 we'll start with Mr. McNeely, the UST Program Update.

11 MR. MCNEELY: Madam Chair, thank you.

12 Just to give you an update on what we have
13 done in the last month, outreach is one of our big
14 priorities last month because Senate Bill 1306 was
15 effective August 25th. So you can see on the back table.
16 We do have a fact sheet on the web now. It talks about
17 the changes that Senate Bill 1306 has implemented.

18 In addition to the fact sheet, we have a UST
19 newsletter that's on the back table. That's going to be
20 on the web. And we're also going to send a couple
21 thousand copies of that to all of our stakeholders, and
22 that should be in the mail pretty soon. We have to make
23 all the copies first.

24 In addition to that, we have a postcard going
25 out to everybody talking -- referring back to the fact

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1 sheet giving a quick outline of what the senate bill is
2 and also highlighting that we're going to have a
3 consultants day or owner-operator day.

4 MR. JOHNSON: UST program day.

5 MR. MCNEELY: UST program day, inviting them
6 to join that. So the outreach efforts have really been
7 pretty significant. We have got a lot of paperwork and
8 hopefully it's going to be helpful to get the word out
9 because there are some significant changes.

10 In addition to that, the SAF rule, and this
11 is Judy's update, but I'll go ahead and do this for you,
12 Judy. We're on track still. We're committed to October
13 1st of giving the draft rule. We're moving along pretty
14 well.

15 So October 1st is still looking good. Then
16 after October 1st we have the Policy Commission scheduled
17 October 13th meeting which is going to be about a
18 five-hour meeting.

19 Judy will not be there at that meeting, just
20 to give you a heads up. She'll be a grandmother at that
21 point, so other priorities. But I'll be there and I'll
22 have support to go over it.

23 CHAIRPERSON CLEMENT: Great.

24 MR. MCNEELY: And we're going to continue on
25 just with the priorities. We're still trying to

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1 streamline the processes. We have got a lot of reports
2 in from August. We had more CAPs in August than we had
3 in the previous, like, seven months. So we got a lot of
4 SAF applications.

5 Things are happening out there. I'm not sure
6 what it is exactly, but we're getting a lot of reports
7 coming in which is good. So we need to streamline our
8 processes. We need to get the reports reviewed
9 consistently and out the door. And that's what we're
10 working on.

11 We're still working on redoing that database
12 which is going to be very helpful. We're still pushing
13 to get that done by next July, but it'll be helpful to
14 help manage the program to get information to be more
15 streamlined.

16 So there's a lot of issues or a lot of
17 priorities that we're working on right now internally.

18 CHAIRPERSON CLEMENT: Mr. McNeely, on the
19 database, you have the necessary resources to do that
20 work now?

21 MR. MCNEELY: Yes. We were allocated
22 \$500,000 by the legislature last year. We hired a
23 contractor to do it. And they have three to four
24 programmers full-time working on it. And it's a little
25 bit of an issue or it's a challenge because what we're

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1 doing is, we're implementing the Senate bill, trying to
2 streamline processes at the same time trying to write a
3 database to implement these new processes which we're
4 still streamlining.

5 So, you know, the chicken and the egg thing
6 comes. So it's a challenge. To get it done by June and
7 July will be a real challenge. But we're pushing. We
8 have the resources. It's a high priority for all the
9 section managers and all of our staff.

10 So in nine months, hopefully we'll have sort
11 of a lot more tools at our fingerprints to run the
12 program. That's all I have.

13 CHAIRPERSON CLEMENT: Any questions or
14 comments for Mr. McNeely?

15 MR. GILL: Just one thing.

16 How often does the fact sheet come out? When
17 there's facts to put on it?

18 MR. MCNEELY: Yes, as needed. Well, the
19 Senate bill was a huge issue. So I feel good that we got
20 that out there. We just need to get the word out to all
21 of the stakeholders. It's on our web too, more
22 information.

23 Well, actually the fact sheet's on the web.
24 So that's what the postcard's for, to tell everybody to
25 go to the web and get the fact sheet. But I think we may

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1 have a fact sheet down the road on the SAF rules,
2 probably down the road but I'm not sure about that yet.
3 We'll see how that goes.

4 MR. GILL: So the fact sheet isn't a monthly
5 thing. How about the UST News? Is that a continuing
6 monthly, quarterly thing?

7 MR. MCNEELY: When was the last one we did?

8 MR. KERN: The last one we did was probably
9 about two years ago, but right now I'm kind of compiling
10 some other things that maybe we'll want to talk about in
11 the future.

12 As Phil said, we've got a lot of things going
13 on and a lot of information to pass to our customers out
14 there. So right now I can envision one going out right
15 now. It's ready to go out. And maybe another one toward
16 the end of the year.

17 And then we'll look at it on a periodic
18 basis. What that period is, I can't say at this point.

19 MR. GILL: Which one?

20 MR. KERN: The newsletter.

21 MR. GILL: Okay. Because I remember in the
22 past, years ago when they had this, it was real helpful.

23 MR. KERN: We recognize that it is useful to
24 our customers, and we would like to get a lot of the
25 information out there but we'd like to make sure it's all

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1 appropriate and timely.

2 CHAIRPERSON CLEMENT: Just a follow-up
3 question, Mr. Kern. This is also on the bulletin,
4 correct? The newsletter is on the bulletin?

5 MR. KERN: It will be going to the website.
6 It won't be on the bulletin, per se, but there will be a
7 link on the website. So it should be, as Judy said,
8 pretty easy to navigate once you get to the tank program
9 page which is easy to get to.

10 CHAIRPERSON CLEMENT: But the bottom line is,
11 anything that you put in a paper format will also be in
12 electronic format in the UST division web site?

13 MR. MCNEELY: Yes, that's correct.

14 CHAIRPERSON CLEMENT: Great. Thank you.

15 Any other questions, comments?

16 Okay. Then let's go on to the SAF monthly
17 update with Judy Navarrete.

18 MS. NAVARRETE: Judy Navarrete, SAF. We did
19 have an onslaught of applications last month. And I
20 think maybe it was because there was some
21 misunderstanding out there that if you got your
22 application in before August 25th that there was no
23 copayment for volunteers, which that's not the way the
24 statute reads. The statute reads: When paid.

25 So -- but we already have quite a few

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1 applications this month also. So there's just a lot of
2 work being done and that's great.

3 So you can see we had 94 submitted last
4 month. We got 60 applications through there. And on the
5 page where it breaks everything down, we did have one in
6 the over 180 days but that's an electronic reimbursement.

7 And as you know, those have to go with the
8 date of the preapproval. That's the way we track them.
9 So actually when we make an electronic reimbursement for
10 those monies that goes over a preapproved amount, it has
11 to be back dated. So most of those -- sometimes those
12 are over 365 days, and just depending.

13 And we did get in a few more appeals last
14 month. That seems to just go up and down. And we did go
15 to formal hearing once but it was dismissed. The Judge
16 just dismissed it. There was no case.

17 CHAIRPERSON CLEMENT: Any questions for Judy?
18 Any comments? Mr. O'Hara.

19 MR. O'HARA: Madam Chair, Judy, do you know
20 offhand or maybe you can provide at the next Policy
21 Commission meeting a financial status of the fund showing
22 what the current balance is of available funds for
23 reimbursement compared to the amount of applications that
24 are in process so we can just get a status of the fund in
25 terms of the solvency? I know you unencumbered a lot of

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1 the preapprovals, correct?

2 So that's freed up a lot of funds?

3 MS. NAVARRETE: We're operating on a cash
4 basis as the State demands.

5 MR. O'HARA: Okay.

6 MS. NAVARRETE: And right now there's a
7 little over 26 million dollars in non-Maricopa and about
8 7 million dollars in Maricopa.

9 And at any given time I have maybe from 4 to
10 5 million dollars worth of applications being processed.
11 That fluctuates depending on how many determinations we
12 made, how much money's been paid out, whatever.

13 MR. O'HARA: Are you still tracking those
14 preapprovals that you unencumber just so that you know
15 what you're kind of expecting in the future?

16 I know at one point we had an
17 80-million-dollar insolvency. I was just wondering if
18 that number was just inflated or --

19 MS. NAVARRETE: You know what, that's not an
20 insolvency because that's --

21 MR. O'HARA: I was just inquiring. You used
22 to say we had 80 million insolvency, (inaudible) but I
23 know you released it. So I'm just wondering, do you know
24 if that 80 million that was mostly encumbrances are still
25 coming or if a lot of those have been closed? You still

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1 track what outstanding preapproval encumbrances are even
2 though you don't actually encumber the money?

3 MS. NAVARRETE: Yes. In a way I do. I don't
4 track that as closely as I thought -- at one time I
5 thought I needed to. If someone does submit a direct pay
6 and let's us know it's a last direct pay, we will make

7 that -- we added some boxes in the preapproval itself,
8 the screen, to make it inactive.

9 But as far as a liability to the fund, that
10 can't become a liability to the fund until someone
11 submits an application to actually -- that the work has
12 been done. And then that creates a liability to the
13 fund.

14 MR. O'HARA: Thank you. That's what I
15 needed.

16 CHAIRPERSON CLEMENT: Excuse me for just a
17 minute. For the record, Mr. Tsiolis has just joined the
18 Policy Commission. Thank you. Mr. Gill.

19 MR. GILL: Thank you, Madam Chairman.

20 Judy, given the rash of CAPs and work plans
21 that have just come in, and I know that there's going to
22 lots of work being done in the next -- well, obviously
23 because we have a deadline now.

24 Do you foresee there being any problem
25 with -- you mentioned there was seven million in Maricopa

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1 County. If there's, all of a sudden, a lot of work being
2 done, a lot of applications being turned in, because,
3 see, I still have a hard time understanding where the
4 money's coming from or going be to be coming from to pay
5 all the claims that keep coming in.

6 And you don't foresee a problem if there's an
7 awful lot of work done, an awful lot of work coming in?
8 How is the fund going to keep up with it?

9 MS. NAVARRETE: Well, because averaging out,
10 when I unencumbered the money in the first place, I
11 averaged out how much we were paying out each year and
12 how much we would pay out had they been paid on time.
13 And that's direct pays and reimbursements.

14 And going by that, there's always been enough
15 cash to support this fund. And right now we have plenty
16 of money, especially in non-Maricopa County.

17 I could possibly some day go back to ranking
18 in Maricopa. That might become close. I'm hoping it
19 doesn't happen but that's just something we'll have to
20 look towards in the future.

21 MR. GILL: Well, I guess the concern that I
22 had is, I understand what you're saying, how you figured
23 it out, but the work that was being done in the last few
24 years was really at a snail's pace. We were getting
25 nothing through. We were in appeals all the time. And

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1 if we actually start moving forward, which we're all
2 hoping we do, I think the work could be coming in a lot
3 quicker.

4 And so that's what I was asking is if you
5 indeed do have a lot of work coming in and a lot of
6 applications being sent in, you may end up having to go
7 to -- you know, as you mentioned, having to rank them
8 again for payment, because I just foresee a lot more work
9 being done and a lot more applications submitted than
10 there has been done in the last few years.

11 MR. O'HARA: I want to just piggy-back those
12 comments. I think, up until you made that change in
13 encumbrances, a lot of reimbursements would take up to
14 two to three years just simply because -- (inaudible)

15 And since that change, money's been available
16 and people have a general understanding that when they do
17 their work and submit the claim that the only delay's
18 really going to be a process delay and that the money's
19 available.

20 And if that situation changes, I think it's
21 just important to get out to the public, to let them
22 know, you may do your work today but you may also have to
23 wait, given the rash of work that may come from increased
24 applications, you may be waiting six months or whatever.

25 I'd like to just project that, if I could,

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1 and maybe if we have some status of the funds and then
2 maybe see what -- in terms of these applications that
3 you're receiving, how many dollars are being requested.

4 I don't want you doing a lot of extra work.
5 I'm just saying, if we can just get an idea, if that 7
6 million is dwindling down to the point where there's
7 nothing, just kind of get the word out to people, hey,
8 you're not going to get your money in 60 days. It may be
9 a little wait.

10 CHAIRPERSON CLEMENT: Mr. O'Hara, is what
11 you're asking is sort of a trend analysis, because we now
12 obviously see there's been some additional applications
13 in place versus the prior months?

14 MR. O'HARA: Not going back very long
15 historically, Madam Chair. Just, as she said in August
16 and already in September, she's seeing a high number of
17 claims coming in, and she said there's 7 million in
18 non-Maricopa. And I realize non-Maricopa's not really an
19 issue at this point.

20 But to the extent that Maricopa had these
21 rash of claims that are eating up that 7 million, we just
22 might want to kind of be aware of that and let our
23 clients and the public know that money may be drying up.

24 CHAIRPERSON CLEMENT: Ms. Navarrete.

25 MS. NAVARRETE: I would request that you put

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1 that off until November because next Tuesday my
2 daughter's going to deliver a little girl and I'm going
3 to be off the month of October.

4 So I'll bring you that in November.

5 MR. O'HARA: That's fine. Just some dollars
6 associated with the numbers would be great. I can do
7 some projections.

8 CHAIRPERSON CLEMENT: Ms. Foster.

9 MS. FOSTER: Madam Chair, having gone through
10 this process hundreds of times with the State Assurance
11 Fund, I may be paid a certain portion. I'm not paid
12 immediately. Sometimes it might be six months before I
13 see that final payment come through the door.

14 So I think owners and operators are aware
15 that they are not going to be paid immediately. There's
16 going to be a delay in the process.

17 And I'm afraid if we ask for a snapshot of
18 what's occurring right now, that snapshot's going to
19 change every month based on how many applications come
20 in. If all of a sudden we're up to 100 applications or
21 action plans are approved, it's going to be a rolling
22 window. So I don't know how much confidence we should
23 put in a number when it's a moving number.

24 Also, Judy, is this increase up to 90?

25 MS. NAVARRETE: 94.

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1 MS. FOSTER: 94? Is some of that based on
2 the people who were denied because of insurance
3 requirements?

4 MS. NAVARRETE: No.

5 MS. FOSTER: Okay. Thank you.

6 MR. O'HARA: Madam chair, just in response to
7 Ms. Foster. Some of the owner-operators out there and
8 particularly the consultants on direct pay may be doing
9 that work with the expectation that they are going to get
10 paid in 30 days.

11 And that's the way it's been for the last --
12 actually more than the last year or two because when
13 you're preapproved your money is encumbered. And then
14 you had the expectation that as soon as you submitted a
15 direct pay you're going to get paid.

16 If that expectation changes and these
17 consultants do work with the expectation of getting money
18 in 30 days and it takes 90, they may not be in a solvent
19 position that Ms. Foster's company is in getting paid.
20 So I think it's important for them to understand that.

21 CHAIRPERSON CLEMENT: Ms. Navarrete.

22 MS. NAVARRETE: Well, also, Mike, it wasn't
23 an automatic, that just because you put in a preapproval
24 and the preapproval was approved that you were going to
25 be paid in 30 days or paid when that direct pay came in.

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1 The preapproval had to be ranked.

2 And sometimes that would take two to three

3 years because of the amount of money that was needed.

4 And if that went over the amount for one month, then it

5 would be delayed until the next month so --

6 MR. O'HARA: Am I correct in saying that once

7 you had your preapproval approved and encumbered that

8 then you could go forward with the work, be it the

9 consultant, direct pay, owner-operator, submit that

10 application and know that the money was there and that as

11 soon as it got processed you'd be paid on direct pay.

12 Whereas now there is no encumbrance so that

13 if they submit a direct pay and there is no money, they

14 may have to wait along with everybody else until that

15 money becomes available.

16 MS. NAVARRETE: Well, I can see that you have

17 a concern there, but the major work that is being done in

18 Maricopa County is major oil.

19 MR. O'HARA: Okay.

20 CHAIRPERSON CLEMENT: Just to clarify in my

21 mind. If we tracked, and I think you're already doing

22 it, you tracked how many claims you've gotten and how

23 much your cash flow is for non and Maricopa County and if

24 the cash flow number stops -- you know, starts dropping,

25 I think your issue about giving people sort of a prelim

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1 on that would be available to us. Would that be
2 sufficient? And I think you're already doing that.

3 MS. NAVARRETE: Oh, yes. I keep track of
4 that.

5 CHAIRPERSON CLEMENT: So maybe think about
6 what you're hearing us request and be prepared to respond
7 to it in November. But I think you're already doing
8 that.

9 MS. NAVARRETE: I do a monthly balance sheet.
10 I get it from the fiscal services of exactly where I'm at
11 financially on both counts.

12 CHAIRPERSON CLEMENT: Good. Well, that's a
13 good point because looking at these numbers increasing,
14 the regulated community may be in a ranking system again.
15 So thank you very much.

16 Any other questions or discussion on that?
17 Okay. Thanks, Ms. Navarrete.

18 The next agenda item is the SAF Rule Update.
19 And again, Ms. Navarrete, or did we already cover that?

20 MR. MCNEELY: We already covered that. It's
21 on the same schedule. Also it's in the newsletter.

22 CHAIRPERSON CLEMENT: Okay. And also just a
23 reminder that there will be --

24 Well, I'm pre-empting Hal, but there will be
25 a joint Technical Financial Subcommittee Meeting and Rule

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1 Discussion Meeting on October 13th starting at 8:00 a.m.

2 And it will be -- what location do we have?

3 MR. GILL: Fourth floor conference room.

4 CHAIRPERSON CLEMENT: And that will be the
5 first opportunity -- no? Not the fourth?

6 MR. BEAL: Well, I have concerns that,
7 because of the nature of this meeting, that the fourth
8 floor conference room is not going to be large enough.
9 You might want to check on that one.

10 CHAIRPERSON CLEMENT: I think you should
11 probably consider maybe a larger room that may be
12 available because it will be the first opportunity for
13 the regulated community to have any input to the Agency
14 on the new rule.

15 MR. GILL: That's where it's typically held
16 but that is a good point.

17 MR. JOHNSON: Just to let you know, we are
18 actually looking for a bigger venue.

19 CHAIRPERSON CLEMENT: Okay. Any other
20 comments on the future rule?

21 Then we'll move on to the UST Corrective
22 Action Monthly Update with Mr. Drosendahl.

23 MR. DROSENDAHL: Yes. I'm Joe Drosendahl,
24 the Corrective Actions Section Manager. In your packet
25 is all the normal data on our productivity and workload.

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1 For SCRs, currently we have 19 SCRs that have not been
2 responded to. As Phil McNeely stated, recently we have
3 had a big upswing in the number of CAPs being submitted.
4 So unfortunately our workload for CAPs right now is 29
5 CAPs that haven't been responded to.

6 And with risk assessments, currently we only
7 have nine risk assessments that have not been approved.
8 And with LUST case closure requests, our workload is 11.

9 In regards to -- on one of the pages it
10 states the activity of the State Lead Unit, and at the
11 bottom of that, this kind of goes into an update further
12 on, but under the Municipal Tank Closure Program, the
13 State Lead Program is removed. 54 USTs from 14 cities
14 that have made applications.

15 In regards to corrective action plans, we are
16 currently looking at revising the CAP process internally.

17 There's a group of staff that are looking at
18 the CAP process and how to streamline it to enable owners
19 and operators for developing CAPs quicker, for DEQ to
20 review and approve the CAPs quicker and to get people
21 remediating at these high-risk sites quicker.

22 We're trying to expedite that process as
23 quick as possible. With SAF having a sunset date, we're
24 expecting a lot more releases, a lot more work to be
25 done. So hopefully this will just help our overall

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1 workload and get these sites cleaned up a lot quicker
2 before the SAF goes away. And is there any questions?

3 CHAIRPERSON CLEMENT: Mr. Drosendahl, in your
4 streamlining of the CAP review process, what areas are
5 you specifically looking at and how will that help the
6 regulated community?

7 MR. DROSENDAHL: Basically we're not just
8 looking at streamlining our review process. We're
9 streamlining the whole CAP process from beginning to end.

10 We're looking at changing what elements go
11 into a CAP in the first place. We're trying to make
12 these CAPs a lot simpler so basically the review will be
13 simpler and get people out there. So it's not only the
14 review process. It's also what we're reviewing.

15 CHAIRPERSON CLEMENT: Mr. McNeely.

16 MR. MCNEELY: Yes. What's required from the
17 CAP is in our rule. You just have to meet the rule
18 requirements. Maybe the level of detail may change a
19 little bit. And also in terms of consistency, Joe had
20 all his case managers meet this week.

21 And we'll probably do that quite a bit with
22 all the CAPs, just talk about what's coming in the door,
23 talk about the different issues, try to get some
24 consistency going and just get the expectations, what we
25 expect. So then eventually hopefully that will reflect

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1 out to public what we expect once we get on the same
2 page, because one thing that's difficult when you have 18
3 CAPs and 28 CAPs and you have all these different case
4 managers, you know, you hear it all the time, saying, be
5 consistent.

6 But it's difficult when you have individual
7 people, individual sites, to be consistent, especially
8 when you really get busy. And that's going to be a
9 challenge, I think. But we're going to try to do that,
10 have more group meetings.

11 CHAIRPERSON CLEMENT: Would it be helpful to
12 ADEQ, and I know Hal does an excellent job on getting
13 information from the regulated community about issues
14 that arise, if we find consistency issues to make sure
15 that you've been informed about those?

16 Because over time I think people that are
17 active in this program have seen some issues.

18 And so we can inform you perhaps from, you
19 know, the regulated end, and then you can perhaps be more
20 informed about what your own problems may be.

21 MR. DROSENDAHL: Oh, definitely. Not only
22 with CAPs but SCRs, LUST case closures, you know,
23 whatever. If there's any, you know, reoccurring issues
24 from our reviews, then definitely we more than welcome
25 that.

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1 CHAIRPERSON CLEMENT: Great.

2 Mr. Gill, did you have any --

3 MR. GILL: No. I know I have talked with Joe
4 about this in the past and I think it's a great move to
5 make. And I'm pleased to hear you talk about the
6 training. I think it's a great step.

7 CHAIRPERSON CLEMENT: Any other comments or
8 questions on Mr. Drosendahl's presentation?

9 Great. Thank you very much.

10 The next agenda item is the technical
11 subcommittee update. And Mr. Gill is the subcommittee
12 chairperson.

13 MR. GILL: Thank you, Madam Chair.

14 I think I can shed some light on the reason a
15 bunch of CAPs came in.

16 Our first issue that we discussed at the
17 Technical Subcommittee dealt with the belief by the
18 regulated public that the new Senate Bill 1306 had a
19 requirement in there -- well, actually in the rule as
20 well, that there was a requirement to do Tier II risk
21 assessments for every site to show that you have looked
22 at the most cost effective, that you're addressing all
23 the alternatives for mediation and that you've looked at
24 the most cost effective to compare it.

25 And so that was one of the issues in the

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1 Senate bill that brought that forward even more.

2 And so there was concern by the regulated
3 public that if they didn't get their CAPs done before
4 1306 went into effect that every site was, from this
5 point forward, was going to require a Tier II risk
6 assessment. And so there was a big jump on completing
7 CAPs. And that issue was discussed in subcommittee.

8 And the action that came out of it is that
9 DEQ's preparing a short policy statement to clarify owner
10 and operator discretion for submitting a risk assessment
11 pursuant to the UST corrective action rule.

12 I know there's still some concern out there
13 that -- you know, there's still owner-operator
14 consultants that believe that their reading of the rule
15 is that it is required.

16 And so we'll wait to see this policy
17 statement and see if, you know, if everyone's in
18 agreement with it because everyone does not want to do a
19 risk assessment on every site. But that is one of the
20 reasons that there was a rash on CAPs.

21 So that was the first issue.

22 The second issue dealt with the requirement
23 to do a report within 90 days of a release reporting
24 date. And this was -- in the last couple years or so,

25 it's been taking longer than that to get a LUST number

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1 assigned.

2 And so there's a lot of work being done that
3 if, ultimately, DEQ did not assign a LUST number, none of
4 that work was paid for. But you are required to submit a
5 90-day report with the information and so that people
6 were moving forward with the work for that report.

7 And what finally came out of that discussion
8 is that we're hoping that with a new release confirmation
9 policy that the LUST numbers will be assigned a lot
10 quicker. There will be less concerns with the decisions
11 being made as far as whether or not it's a LUST number.
12 And that will be an easier process. And so that was
13 the -- what came out of that discussion.

14 Those are the only two issues that we
15 discussed. And then as Gail mentioned, the agenda items
16 for the next meeting were set and the first one will be
17 the Technical and Financial Subcommittee combined
18 committee meeting on the draft SAF rules.

19 And so we're really glad to hear that they
20 were on schedule. And if we were to actually get through
21 that discussion, which I don't foresee in one meeting,
22 then we would move forward to air sampling technologies
23 and those kind of things.

24 And I just, in the last couple days, was

25 compiling a lot of information on air sampling

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1 technologies for, you know, all of us to start looking
2 at. I think that's it.

3 CHAIRPERSON CLEMENT: Any comments or
4 questions? Discussion?

5 Okay. The next agenda item is the Financial
6 Subcommittee Update. Andrea Martincic, who is the
7 subcommittee chair, is not with us today but I did speak
8 with her. There was not a meeting last month for the
9 Financial Subcommittee.

10 So, therefore, there isn't anything really to
11 report other than the next Technical Subcommittee will
12 again be a joint meeting between Technical and Financial
13 to discuss the new rules.

14 So then we'll move on to the Senate Bill 1306
15 Implementation Update and the first agenda item.

16 Mr. McNeely, are you going to address these?
17 The proposed new cost ceilings.

18 MR. MCNEELY: Yes. Madam Chair, the 1306
19 Update, the new cost ceilings we still internally have
20 not decided exactly what we're doing. We have been
21 focusing in generalities on what we're going to do.

22 But the main focus has been getting the SAF
23 rules written by October 1st. And once those go out to
24 the public comment, I think we'll focus heavily on the

25 cost ceilings. We haven't decided about how to survey,

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1 who to survey, T&M, you know, past pays.

2 We really are just looking at it to take us
3 from July 1st to the end of the SAF. So what can be the
4 most efficient way to do it?

5 So it's an opportunity to really streamline
6 stuff. But it's a difficult -- there is always, you
7 know, pluses and minuses to every approach.

8 So we're going to be working heavily on that
9 probably starting in October. We've looked at it now,
10 but we're still not sure yet.

11 The Technical Appeal Panel changes. We have
12 not submitted names to the governor's office yet. The
13 director is going to do that this week. He has a list of
14 consultants he's looking at, and he'll submit the names
15 to the governor's office, and I don't know how long it
16 will take the governor's office to respond. But that's
17 happening and that will happen this week.

18 CHAIRPERSON CLEMENT: Has the current number
19 of panel members held up any of the hearings? Are you
20 having a problem with that?

21 MS. NAVARRETE: I see Joe saying no. We have
22 only had one in about the last year. And I believe we
23 are going forward with one Monday.

24 CHAIRPERSON CLEMENT: Ms. Huddleston.

25 MS. HUDDLESTON: Our attorneys have hearings

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1 that are not being scheduled until the first of the year
2 because OAH can't get a panel.

3 MS. NAVARRETE: For UST?

4 MS. HUDDLESTON: For UST.

5 MS. NAVARRETE: For SAF? I'm not
6 experiencing that.

7 CHAIRPERSON CLEMENT: So the inclusion of new
8 members and the expansion of the panel should alleviate
9 basically the staffing problem or the support problem we
10 had in OAH, we hope.

11 MR. MCNEELY: And the claims will go to the
12 governor's office and I believe the governor's office
13 will act pretty quickly on it. Then we should have 13
14 members and that's quite a bit different. We have four
15 right now. So three times. It should work pretty well.

16 Item C, resubmittal of SAF denials due to
17 insurance update, we did send out -- there was 47
18 applicants in that situation. We did send out the form
19 and Judy contacted everybody she could by phone.

20 We had five resubmit and they are ready for
21 payment. We have had three withdrawn. So that leaves a
22 balance of 38 insurance applicants that have not
23 submitted. So they have to December 31st. They have
24 three months. And it's not that -- the form is not that

25 cumbersome to submit that for reconsideration.

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1 CHAIRPERSON CLEMENT: Is there any knowledge
2 from the Commission on why this may be a slow process
3 because I think the information has gone out to the
4 regulated community and people are very interested in
5 this issue. Is there anything else that the Commission
6 or DEQ should be doing to support closing this loop?

7 MR. MCNEELY: We'll talk about it again.
8 They do have a deadline. Is it in our newsletter, Ron,
9 that the deadline is December 31st for resubmittal?

10 MR. KERN: I don't recall it in the
11 newsletter right now but I think that Judy sent it out to
12 each and every one of those applicants, that here's your
13 deadline, here's what you have to do.

14 CHAIRPERSON CLEMENT: Right. I recall the
15 letters went out.

16 MR. MCNEELY: It's in the newsletter.

17 CHAIRPERSON CLEMENT: It's in the newsletter
18 also?

19 MR. KERN: I'm wrong.

20 CHAIRPERSON CLEMENT: Ms. Navarrete.

21 MS. NAVARRETE: I believe some of those
22 applications have probably been paid by insurance and the
23 applicants are just not letting us know.

24 In one case they did but if they have already

25 been paid, they have no reason to let me know that.

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1 CHAIRPERSON CLEMENT: Right. And then
2 those -- I can see some folks in the audience that
3 represent either trade groups or are pretty keyed into
4 the regulated community.

5 Make sure that your memberships and your
6 contacts know about this deadline because we don't --

7 This was such a sore subject for so many
8 people. We don't want them to get into a time loop here
9 where they can't, you know, receive the funds that they
10 are eligible for. That would be a real shame.

11 Thank you.

12 MR. MCNEELY: And the last item, Item B,
13 Rural Tank Closure Initiative. And Joe gave that report
14 a little bit, but we had 14 cities and 54 UST removals in
15 those cities. Would you be interested in just naming the
16 cities? Do you have any interest in that?

17 CHAIRPERSON CLEMENT: Sure.

18 MR. MCNEELY: I'll just name the cities.
19 Winslow, Clarkdale, Williams, Holbrook, El Mirage,
20 Lakeside, Pinetop, Tolleson, Eloy, Springerville,
21 Buckeye, Wilcox, St. Johns, Duncan, and Heber.

22 It's pretty significant. I think the word is
23 out and we have three pending applications right now.

24 And in addition to the initiatives also is to

25 go out and talk to people in Winslow and Holbrook. We

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1 have been having public meetings and pushing the MTCP.

2 So we'll continue to do that. We'd like to
3 do it across the state in all areas, not just up Route 66
4 but everywhere there is issues.

5 CHAIRPERSON CLEMENT: The UST removal process
6 itself, you take out the tank.

7 Are you then following through on the whole
8 corrective actions, if necessary? It's not just a tank
9 removal? I'm sorry I'm ignorant but I am.

10 MR. MCNEELY: If there's a release, then we
11 will report the release and open up a LUST number and
12 carry on in State Lead doing the clean-up.

13 CHAIRPERSON CLEMENT: Okay. And that will be
14 totally paid for by the State Lead program?

15 MR. MCNEELY: That would be paid for by SAF.
16 The whole clean-up would not be paid by the MTCP. It
17 would be a release and it would be a corrective action
18 under State Lead action.

19 CHAIRPERSON CLEMENT: Okay. Any questions or
20 comments? Discussion? Mr. Gill.

21 MR. GILL: Madam Chair, I just wanted to, on
22 7-A, there's real concern out there by owner-operators
23 and consultants that we move the cost ceiling discussion
24 forward as rapidly as possible.

25 And so I would really like to see and I

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1 understand you're in the middle of the rule and you've
2 got limited people to work on all this, but we would
3 really like to see a schedule as soon as you can get one
4 as to what you're planning, because I know there's
5 concerns about whether there's going to be a survey or
6 not because we're hearing rumors that there's not going
7 to be a survey. And there's real concerns about that.

8 And as far as a schedule, we want to know how
9 long it's going to take, how long are we going to have as
10 a body for review and approval of the cost ceilings. We
11 don't want to, you know, get down to a real crunch.

12 And also we would like to see how the
13 ultimate cost ceilings are going to be calculated because
14 we had this issue two, three cost ceilings ago where we
15 spent a long time looking at how they were actually being
16 calculated and had a lot of discussions and came to a
17 consensus on that as well.

18 So this is a big issue and we really would
19 like to see, as soon as you can, what do you think the
20 schedule will be.

21 MR. MCNEELY: Madam Chair.

22 CHAIRPERSON CLEMENT: Mr. McNeely.

23 MR. MCNEELY: Yes. It would be nice to get
24 that done quickly but if we can't, in December we'll

25 probably end up using the current cost ceilings and doing

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1 some cost-of-living adjustments.

2 The absolute deadline for me, I'd like to
3 have it by July when the one cost ceiling goes into
4 effect and the rules go into effect. So I'm looking at,
5 worst case scenario, I'd like to have them done by July.

6 But if we can't by December or January get
7 close to getting them done, then we'll use the current
8 ones with some cost-of-living adjustments so it will give
9 us some time. And I will try to give you a schedule but
10 really right now I really don't know.

11 MR. GILL: I thought we were required to have
12 it by July 2005. I thought the new ones had to be in
13 place.

14 MR. MCNEELY: We're supposed to have one cost
15 ceiling. It doesn't necessarily say -- we probably
16 could -- we have to look at that legally -- use the ones
17 we have now, but I'm not sure how well that would work.
18 So we want to really streamline it.

19 CHAIRPERSON CLEMENT: Any other questions or
20 comments, discussion?

21 Thank you, Mr. McNeely.

22 Okay. Wow. We're whipping through these
23 agendas. We're on to discussion of agenda items for the
24 next Commission meeting. We'll open that up. Mr. Gill.

25

MR. GILL: Madam Chair, I would say probably

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1 since we're hoping for the SAF rule on October 1, we'll
2 be discussing it at the October 13th Technical and
3 Financial Subcommittee joint meeting.

4 And then so I would assume that we might be
5 able to bring some discussion items forward for that. So
6 I would say at a minimum the discussion of the SAF rule
7 package, we might be able to be more specific after our
8 meeting. But that would be one I know because we're
9 trying to move this forward as rapidly as possible.

10 CHAIRPERSON CLEMENT: And then the other
11 agenda item that we had mentioned was to have the AG's
12 office provide us another briefing on our
13 responsibilities as a Commission, voting, and what needs
14 to move forward in that process.

15 Anything else from the Commission?

16 And please, if you have other agenda items as
17 the month rolls on, don't hesitate to forward them on.
18 This is an open process and we want to make sure that all
19 of the issues that people identify are included in these
20 meetings. Anything else?

21 Well, on that note, the next -- let's see.
22 General call to the public.

23 Are there any public comments today?

24 My goodness. We've got a happy, silent

25 crowd.

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1 Okay. Announcements.

2 The next Policy Commission meeting will be in
3 this room on October 27th beginning at 9:00 a.m.

4 And if there's nothing else, we'll adjourn
5 today's UST Policy Commission.

6 Thank you everyone. Appreciate it.

7 (Meeting concluded at or about 10:25 a.m.)

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C E R T I F I C A T E

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I HEREBY CERTIFY that the proceedings had
upon the foregoing meeting are contained in the shorthand
record made by me thereof and that the foregoing pages
constitute a full true and correct transcript of said
shorthand record all done to the best of my skill and
ability

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DATED at Phoenix, Arizona this 11th day of
October, 2004.

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